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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/757,842	01/10/2001	Edward R. Knapp III	102088-300	8162

7590 10/09/2002

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EXAMINER

TRAN, KHOA H

ART UNIT

PAPER NUMBER

3634

DATE MAILED: 10/09/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/757,842

Applicant(s)

KNAPP ET AL.

Examiner

Khoa Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 January 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,9 and 12-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,9 and 12-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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Election/Restriction

Applicants' election with traverse of the Group I, Species IV (Figs. 42-44, and 57-59) in Paper No. 8 is acknowledged. The traversal is on the ground that there is no serious burden on the examiner to examine all of the claims of the present invention. This traversal is not found to be persuasive because the applicants' fail to provide any reasoning or rationale showing the properly support to the general allegation. In particular, applicants fail to show that a coextensive search is not required in considering the variations of multiple patentably distinct embodiments in the same application. Accordingly, claims 3, 5-8, 10, 11, and 25-34 are withdrawn from consideration as being directed to non-elected invention. The original election requirement is deemed to be proper and is therefore made FINAL. See 37 CFR 1.142(b) MPEP 821.03.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 9, 17, 18, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morrow et al. in view of Babberl. Morrow et al. discloses a retail

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display system comprising an elongated strut (10) having a first array of apertures (76) in a raised central portion between the rearwardly bended side portions (72, 74) that have the second array of apertures (100), see Figure 3; a plurality of holding elements (14) each engaged the respective apertures on the elongated strut; and a header (16) locates on top of the strut. See Figure 1 and 2. Babberl teaches a tray holding element (11) having an aperture near the top of the tray to engage a hook for mounting the tray to display the items that store therein. See Figure 1. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide the retail display system of Morrow et al. with the provision of tray holding elements as taught by Babberl in order to have the tray to store and display items therein. With respect to the strut being the plastic and the tray being corrugated materials, it should be noted that plastic and corrugated materials are well-known and commercially available elements that used in rack or shelf construction. Accordingly, it would have been obvious to one of ordinary skill in the art as a matter of engineering design choice to utilize plastic to manufacture the strut therefrom and to utilize corrugated materials to manufacture the tray therefrom because it is well-within the level of skill in the art to utilize the known materials to produce the strut and the tray accordingly to its suitability of intended use without structurally alter the device or affecting its usage. With respect to claim 9, it would have been an obvious matter of engineering design choice as determined through routine experimentation and optimization for one of ordinary skill in the art to routinely dimension the strut width and the length to be 5 cm and 10 cm, and .7 cm and

1.5 cm, and to routinely dimension the header width and length to be at least 12 cm and 10 cm, for a particular application thus producing no new and unexpected results

Claims 4, 12-16, and 19-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morrow et al. in view of Babberl as applied to claims 1, 2, 9, 17, 18 and 24 above, and further in view of Johnske. Johnske discloses the trays are corrugated having fold lines, cut lines, and notches on the portion panels. See Figure 1. Figure 1 illustrates the tray having the aft most portion with a tab, the aft most portion is connected to the fifth, second, third and first portions. The first and third portions are connected to the seven, sixth and eight portions. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the tray of Babberl with the provision of trays that are corrugated as taught by Johnske in order to have the trays that are collapsible so that it would take up less space for the purpose of shipping.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ellis, Gallagher, Valiulis ('166) and ('916), Leonard, Fast, Sharman, Grueneberg, Maglione, and McIntyre are cited to show devices having similar configurations of design.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa Tran whose telephone number is (703) 306-3437. The examiner can normally be reached on Monday through Thursday from 8:30 A.M. to 7:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola, can be reached on (703) 308-2686. The fax phone number for this Group is (703) 305-3597 or (703) 305-3598.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.

If the applicant is submitted by facsimile transmission, applicant is hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and M.P.E.P. 502.02). In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a deposit account, can be submitted by facsimile transmission. Responses requiring a fee which applicant is paying by check **should not be** submitting by facsimile transmission separately from the check. Responses submitted by facsimile transmission should include a Certificate of Transmission (M.P.E.P 512). The following is an example of the format the certification might take:

I hereby certify that this correspondence is being facsimile transmitted to the
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Fax No. _____ On _____
(Date)

Type or printed name of person signing this certificate:

(Signature)

Furthermore, please do not separately mail the original or another copy unless required by the Patent and Trademark Office. Submission of the original response or a follow-up copy of the response after your response has been transmitted by facsimile will only cause further unnecessary delays in the processing of your application; duplicate responses where fees are charged to a deposit account may result in those fees being charged twice.

Khoa Tran
September 30, 2002


ROBERT W. GIBSON, JR.
PRIMARY EXAMINER
ART UNIT 3634